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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal-State Joint Board on Universal Service)	CC Docket No. 96-45

AT&T OPPOSITION TO PETITION FOR CLARIFICATION

Pursuant to Section 1.45 of the Commission's Rules, 47 C.F.R. § 1.45, AT&T Corp. ("AT&T") hereby opposes the October 29, 1997 Petition for Clarification of the Five Colleges, which requests a finding that the telecommunications services provided by them to students do not require them to contribute to the Universal Service Fund ("USF") and that they are not required to complete the USF worksheet.[1] To the contrary, it is clear that the Five Colleges are required to contribute and to file the worksheet in accordance with the Commission's May 8, 1997 Universal Service Order.[2]

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1 The Five Colleges are composed of Kenyon College, Oberlin College, Denison University, Ohio Wesleyan University, and The College of Wooster. As indicated in their Petition, AT&T Colleges and Universities Services ("ACUS") bills the students and faculty of Oberlin and Wooster for non-credit card calls (p. 2).

2 Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157, released May 8, 1997, and published in the Federal Register on June 17, 1997 (62 Fed. Reg. 32862), pets. for review pending sub nom. Texas Office of Public Utility Counsel v. FCC, Nos. 97-60421 *et al.* (5th Cir.) ("Universal Service Order"), id., Order on Reconsideration, FCC 97-246, released July 10, 1997;

(footnote continued on following page)

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In the Universal Service Order (paras. 777-791), the Commission determined that, under Section 254(d) of the Telecommunications Act of 1996, all interstate telecommunications service providers offering service for a fee directly to the public on a common carrier basis are mandatory contributors to the federal USF. The Commission also determined that private service providers (and payphone aggregators) that offer interstate telecommunications services to others for a fee must contribute under Section 254(d)'s permissive authority (paras. 793-796). Under the regulatory regime adopted by the Commission, the Five Colleges must report their student revenues and pay USF contributions on those revenues.[3]

While conceding that they provide both long distance and payphone service to students, the Five Colleges contend that they are not required to contribute to the USF because: (1) all revenues generated are used to cover expenses and plant upkeep; (2) they are not a

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(footnote continued from previous page)

Second Order on Reconsideration, FCC 97-253, released July 18, 1997. Unless another Order is specifically referenced, all paragraph citations herein are to the Universal Service Order.

3 Although AT&T addresses the Petition on the merits, it actually amounts to an untimely petition for reconsideration of the Universal Service Order, which, under Section 1.429 of the Commission's rules, should have been filed no later than July 17, 1997.

mandatory contributor because they do not offer telecommunications for a fee directly to the public or such classes of users as to be effectively available to the public; (3) they are not permissive contributors because they serve only their internal needs and do not provide services or lease excess capacity on a private contractual basis to others and hence do not qualify as "private service providers that offer their services to others for a fee;" and (4) they are not payphone aggregators because they do not make telephones available to the public or transient users of their premises (pp. 2-5).

The Five Colleges also contend that there is no public interest reason to find them to be permissive contributors on competitive neutrality grounds because they are "primarily a user of services not a reseller of such services" and thus do not compete directly with carriers which have universal service obligations (p. 5). And, they contend that the public interest supports their request because they are institutions of higher education and would be burdened by the extensive paperwork requirements of the USF worksheet (p. 6).

The Universal Service Order clearly requires the Five Colleges to contribute to the Universal Service Fund in their capacity as resellers of long distance service for a fee to their students, and as payphone aggregators, under the tests articulated above. First, regardless of how the Five Colleges apply the revenues derived from their provision of telecommunications services, it does not change the fact that they provide telecommunications services to the students for a fee and thus meet the threshold criteria for being a provider of telecommunications services for a fee to others. In that capacity, they either provide such services to such classes of users as to be effectively available directly to the public (in which case they would be mandatory contributors) or, in addition to meeting their official internal business needs, they are private providers of telecommunications services to their students for a fee (in which case they are required to contribute to the USF under the Commission's permissive authority). Second, the Commission has already determined that colleges are payphone aggregators, and there is no basis for exempting the Five Colleges from that ruling now.[4]

Equally clear, the fact that the Five Colleges are higher education institutions is no basis for relief. The fact that a telecommunications service provider is also engaged in another laudable activity cannot logically serve as

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[4] Association of College and University Telecommunications Administrators, *et al.*, 8 FCC Rcd. 1781, para. 5 and n.13 (1993), *citing* Policies and Rules Concerning Operator Services Providers, Report and Order, 6 FCC Rcd. 2744, 2752, para. 15 (1991) (footnote omitted) ("We also find that . . . universities are clearly within the scope of the definition of 'aggregator.'"), recon. denied, 7 FCC Rcd. 3882 (1992).

a basis for exemption as it would open the floodgates for special treatment. And, as AT&T previously showed, the Commission should not exempt non-profit entities that provide telecommunications services for a fee to others.[5] For one, whether an entity makes a profit should not determine contribution status because contributions are assessed on retail revenues not profits. Where, as here, the Five Colleges receive payments from their students for use of their plant and set the rates for long distance services, there is no question that they are network operators and are required to contribute to the universal service fund (paras. 784, 800).[6]

Moreover, and contrary to their assertions, the Five Colleges do potentially compete with other carriers. For example, if an interexchange carrier provided services directly to the students, it would be required to count those revenues toward its universal service contribution base. Therefore, competitive neutrality requires that the Five Colleges likewise be required to contribute on the retail telecommunications service revenues that they derive from students.

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5 AT&T Opposition to Petitions for Reconsideration, CC Docket 96-45, filed August 18, 1997, p. 22 n.20.

6 Furthermore, the Five Colleges' concern about the USF worksheet is misplaced. The form is simple and no greater burden on colleges than any other telecommunications provider.

Most fundamentally, if the FCC exempts a class of contributors, then the obligations of all remaining contributors increases, contrary to the public interest and competitive neutrality.[7] For these reasons, AT&T strongly objects to any and all claims for exemption from USF payment and reporting obligations. In all events, it was improper for USAC to have unilaterally excluded the USF worksheets filed by some colleges and universities "from the count of forms processed and the revenue bases reported" for purposes of calculating the first quarter 1998 USF contribution factor.[8] Indeed, this unauthorized exclusion highlights the critical need for prompt and strict enforcement of filing requirements and FCC oversight of USAC to ensure a sustainable, competitively neutral USF program.

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[7] Other contributors are also harmed if the Five Colleges fail to report their student revenues but pay a USF obligation to AT&T when they are billed for their long distance services. In this instance the total industry contribution base is understated by the margins added by the Five Colleges when they bill their student customers. If the total industry amount is understated, AT&T and other contributors pay a higher amount.

[8] See Universal Service Administrative Company ("USAC"), Federal Universal Service Programs, Fund Size Projections and Contribution Base For First Quarter 1998, filed October 31, 1997, p. 23 n.38.

CONCLUSION

For the reasons stated above, the Commission should deny the Five College's Petition for Clarification.

Respectfully submitted,

AT&T CORP.

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November 10, 1997

CERTIFICATE OF SERVICE

I, Viola J. Carlone, do hereby certify that on this 10th day of November, 1997 a copy of the foregoing AT&T Opposition to Petition for Clarification was served by U.S. first class mail, postage prepaid, on the party listed below.

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